

Introduced by Senator Leno

February 19, 2016

An act to amend Sections 1043 and 1045 of the Evidence Code, to amend Section 3304.5 of the Government Code, and to amend Sections 832.5 and 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1286, as introduced, Leno. Peace officers: records of misconduct.

(1) The Public Safety Officers Procedural Bill of Rights Act provides a set of rights and procedural protections to specified public safety officers. That act requires an administrative appeal instituted by a public agency under the act to be conducted in conformance with rules and procedures adopted by the local public agency. Existing law also establishes the Administrative Procedure Act, and requires enumerated state agencies to hold hearings under that act that are conducted by administrative law judges.

This bill would, notwithstanding any confidentiality afforded the personnel records of peace officers or custodial officers, authorize a municipality or local public agency that employs peace officers or custodial officers to hear and adjudicate administrative appeals, or to empower a body to hear and adjudicate those appeals, in proceedings that are open to the public and in which some or all documents filed are available for public inspection.

(2) Existing law requires a department or agency that employs peace officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law authorizes a department or agency that employs custodial officers to establish a similar procedure for its officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports

or findings. Existing law requires the department or agency to provide written notification to the complaining party of the disposition of a complaint made pursuant to those provisions within 30 days of the disposition.

This bill would require that notification to include, at a minimum, the charges framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions, and any discipline imposed or corrective action taken. By increasing the duties of local officials, the bill would impose a state-mandated local program.

(3) The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law provides that peace officer or custodial officer personnel records, as defined, and records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or information obtained from these records, are confidential and prohibits the disclosure of those records in any criminal or civil proceeding except by discovery. Existing law describes exceptions to this policy for investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would expand the scope of the exceptions to apply to, among other things, investigations or proceedings conducted by civilian review agencies, inspectors general, personnel boards, police commissions, civil service commissions, city councils, boards of supervisors, or any entities empowered to investigate peace officer misconduct on behalf of an agency, conduct audits of peace officer discipline on behalf of an agency, adjudicate complaints against peace officers or custodial officers, hear administrative appeals, or set policies or funding for the law enforcement agency. The bill would also require an entity described in those exceptions to comply with specified confidentiality provisions.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to complaints against peace officers and custodial officers to be available for public inspection pursuant to the California Public Records Act. The bill would provide that this information includes but is not limited to, the framing allegation or complaint, the agency's full investigation file, any evidence gathered, and any findings or recommended findings, discipline, or corrective action taken. The bill would require records

disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

(4) Existing law establishes discovery procedures for obtaining peace officer and custodial officer personnel files and files relating to complaints against peace officers and custodial officers.

This bill would specify that those provisions do not bar or limit access in any proceeding to peace officer or custodial officer personnel records or records relating to complaints against peace officers and custodial officers, and would provide that those provisions do not require a party to a proceeding pending in a court or administrative agency to seek records through alternate means before filing a motion pursuant to the discovery provisions described above.

(5) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Peace officers help provide one of our state's most fundamental government services — keeping our communities safe. These working men and women risk their lives daily in order to protect the people of California. The public greatly appreciates peace officers' hard work and dedication to public safety. The good names of these public servants should not be tarnished by the actions of those amongst their ranks who may engage in wrongdoing.

(b) To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Its misuse can lead to grave constitutional violations, harms to liberty, and the inherent sanctity of human life, as well as significant public unrest.

(c) Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

(d) The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 2. Section 1043 of the Evidence Code is amended to read:

1043. (a) ~~In any case in which~~ If discovery or disclosure is sought of peace *officer* or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code *and for which that section or Section 832.7 of the Penal Code bar or limit disclosure*, or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency ~~which~~ *that* has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency

1 served shall immediately notify the individual whose records are
2 sought.

3 (b) The motion shall include all of the following:

4 (1) Identification of the proceeding in which discovery or
5 disclosure is sought, the party seeking discovery or disclosure, the
6 peace officer or custodial officer whose records are sought, the
7 governmental agency ~~which~~ *that* has custody and control of the
8 records, and the time and place at which the motion for discovery
9 or disclosure shall be heard.

10 (2) A description of the type of records or information sought.

11 (3) Affidavits showing good cause for the discovery or
12 disclosure sought, setting forth the materiality thereof to the subject
13 matter involved in the pending litigation and stating upon
14 reasonable belief that the governmental agency identified has the
15 records or information from the records.

16 (c) ~~No~~ A hearing upon a motion for discovery or disclosure shall
17 *not* be held without full compliance with the notice provisions of
18 this section except upon a showing by the moving party of good
19 cause for noncompliance, or upon a waiver of the hearing by the
20 governmental agency identified as having the records.

21 (d) *A party to a proceeding pending in a court or administrative*
22 *agency is not required to seek records through alternate means*
23 *before filing a motion pursuant to this section.*

24 SEC. 3. Section 1045 of the Evidence Code is amended to read:

25 1045. (a) ~~Nothing in this article shall be construed to~~ *This*
26 *article does not* affect the right of access to records of complaints,
27 or investigations of complaints, or discipline imposed as a result
28 of those investigations, concerning an event or transaction in which
29 the peace officer or custodial officer, as defined in Section 831.5
30 of the Penal Code, participated, or which he or she perceived, and
31 pertaining to the manner in which he or she performed his or her
32 duties, provided that information is relevant to the subject matter
33 involved in the pending litigation.

34 (b) In determining relevance, the court shall examine the
35 information in chambers in conformity with Section 915, and shall
36 exclude *all of the following* from disclosure:

37 (1) Information consisting of complaints concerning conduct
38 occurring more than five years before the event or transaction that
39 is the subject of the litigation in aid of which discovery or
40 disclosure is sought.

1 (2) In any criminal proceeding the conclusions of any officer
2 investigating a complaint filed pursuant to Section 832.5 of the
3 Penal Code.

4 (3) Facts sought to be disclosed that are so remote as to make
5 disclosure of little or no practical benefit.

6 (c) In determining relevance where the issue in litigation
7 concerns the policies or pattern of conduct of the employing
8 agency, the court shall consider whether the information sought
9 may be obtained from other records maintained by the employing
10 agency in the regular course of agency business ~~which~~ *that* would
11 not necessitate the disclosure of individual personnel records.

12 (d) Upon motion seasonably made by the governmental agency
13 ~~which~~ *that* has custody or control of the records to be examined
14 or by the officer whose records are sought, and upon good cause
15 showing the necessity thereof, the court may make any order ~~which~~
16 *that* justice requires to protect the officer or agency from
17 unnecessary annoyance, ~~embarrassment~~ *embarrassment*, or
18 oppression.

19 (e) The court shall, in any case or proceeding permitting the
20 disclosure or discovery of any peace *officer* or custodial officer
21 records requested pursuant to Section 1043, order that the records
22 disclosed or discovered may not be used for any purpose other
23 than a court proceeding pursuant to applicable law.

24 (f) *This article does not bar or limit access in any proceeding*
25 *to peace officer or custodial officer personnel records or records*
26 *maintained pursuant to Section 832.5 of the Penal Code for which*
27 *Sections 832.5 or 832.7 of the Penal Code do not prohibit*
28 *disclosure.*

29 SEC. 4. Section 3304.5 of the Government Code is amended
30 to read:

31 3304.5. (a) An administrative appeal instituted by a public
32 safety officer under this chapter shall be conducted in conformance
33 with rules and procedures adopted by the local public agency.

34 (b) *Notwithstanding any confidentiality given to the personnel*
35 *records of peace officers or custodial officers under this chapter*
36 *or under the provisions governing regulation of peace officers*
37 *contained in Chapter 4.5 (commencing with Section 830) of Title*
38 *3 of Part 2 of the Penal Code, a municipality or local public agency*
39 *that employs peace officers may hear and adjudicate an*
40 *administrative appeal under this chapter, or the municipality or*

1 *local public agency may empower a body to hear and adjudicate*
2 *those appeals, in proceedings that are open to the public and in*
3 *which some or all documents filed are available for public*
4 *inspection.*

5 SEC. 5. Section 832.5 of the Penal Code is amended to read:

6 832.5. (a) (1) ~~Each~~A department or agency in this state that
7 employs peace officers shall establish a procedure to investigate
8 complaints by members of the public against the personnel of these
9 departments or agencies, and shall make a written description of
10 the procedure available to the public.

11 (2) ~~Each~~A department or agency that employs custodial officers,
12 as defined in Section 831.5, may establish a procedure to
13 investigate complaints by members of the public against those
14 custodial officers employed by these departments or agencies,
15 provided however, that any procedure so established shall comply
16 with the provisions of this section and with the provisions of
17 Section 832.7.

18 (b) Complaints and any reports or findings relating to these
19 complaints shall be retained for a period of at least five years. All
20 complaints retained pursuant to this subdivision may be maintained
21 either in the peace *officer's* or custodial officer's general personnel
22 file or in a separate file designated by the department or agency
23 as provided by department or agency policy, in accordance with
24 all applicable requirements of law. However, prior to any official
25 determination regarding promotion, transfer, or disciplinary action
26 by an officer's employing department or agency, the complaints
27 described by subdivision (c) shall be removed from the officer's
28 general personnel file and placed in separate file designated by the
29 department or agency, in accordance with all applicable
30 requirements of law.

31 (c) Complaints by members of the public that are determined
32 by the peace *officer's* or custodial officer's employing agency to
33 be frivolous, as defined in Section 128.5 of the Code of Civil
34 Procedure, or unfounded or exonerated, or any portion of a
35 complaint that is determined to be frivolous, unfounded, or
36 exonerated, shall not be maintained in that officer's general
37 personnel file. However, these complaints shall be retained in
38 other, separate files that shall be deemed personnel records for
39 purposes of the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace *officer's* or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace *officer's* or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace *officer's* or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files ~~which~~ *that* require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this ~~section~~, *section* and Section 832.7, the following definitions apply:

(1) ~~General~~ *"Exonerated" means that the investigation clearly established that the actions of the peace officer or custodial officer that formed the basis for the complaint are not violations of law or department policy.*

(2) *"General personnel file" means the file maintained by the agency containing the primary records specific to each peace officer's or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.*

(3) *"Sustained" means that the investigation disclosed sufficient evidence to prove, by a preponderance of evidence, the truth of the allegation in the complaint or that the actions of the peace officer or custodial officer violated law or department policy.*

~~(2)~~

(4) *"Unfounded" means that the investigation clearly established that the allegation is not true.*

~~(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.~~

(e) (1) *A municipality, county, or agency that employs peace officers may do both of the following:*

1 (A) Hold hearings to hear complaints by members of the public,
2 consider evidence, and adjudicate the complaints or recommend
3 adjudications.

4 (B) Establish a body to hold the hearings described in
5 subparagraph (A).

6 (2) Notwithstanding any confidentiality given to the general
7 personnel file or other personnel records of peace officers or
8 custodial officers, the hearings described in paragraph (1) may
9 be open to the public.

10 SEC. 6. Section 832.7 of the Penal Code is amended to read:

11 832.7. (a) ~~Peace~~ Except as set forth in subdivision (c), peace
12 officer or custodial officer personnel records and records
13 maintained by any state or local agency pursuant to Section 832.5,
14 or information obtained from these records, are confidential and
15 shall not be disclosed in any criminal or civil proceeding except
16 by discovery pursuant to Sections 1043 and 1046 of the Evidence
17 Code. ~~This~~

18 (b) (1) This section shall not apply to investigations or
19 proceedings concerning the conduct of peace officers or custodial
20 officers, or an agency or department that employs those officers,
21 conducted by a grand jury, a district attorney's office, ~~or the~~
22 Attorney General's ~~office~~, office, civilian review agencies,
23 inspectors general, personnel boards, police commissions, civil
24 service commissions, city councils, boards of supervisors, or any
25 entities empowered to investigate peace officer misconduct on
26 behalf of an agency, conduct audits of peace officer discipline on
27 behalf of an agency, adjudicate complaints against peace officers
28 or custodial officers, hear administrative appeals pursuant to
29 Section 3304.5 of the Government Code, or set policies or funding
30 for the law enforcement agency.

31 (2) An entity allowed access to the personnel and complaint
32 records of peace officers or custodial officers under this
33 subdivision shall comply with the confidentiality provisions of this
34 section.

35 (c) (1) Notwithstanding any other law, all of the following peace
36 officer or custodial officer personnel records and records
37 maintained by any state or local agency pursuant to Section 832.5
38 shall be available for public inspection pursuant to the California
39 Public Records Act (Chapter 3.5 (commencing with Section 6250)
40 of Division 7 of Title 1 of the Government Code):

1 (A) A record related to the investigation or assessment of any
2 use of force by a peace officer that is likely to or does cause death
3 or serious bodily injury, including but not limited to, the discharge
4 of a firearm, use of an electronic control weapon or conducted
5 energy device, and any strike with an impact weapon to a person's
6 head.

7 (B) A record related to any finding by a law enforcement agency
8 or oversight agency that a peace officer or custodial officer
9 engaged in sexual assault, an excessive use of force, an unjustified
10 search, detention or arrest, racial or identity profiling, as defined
11 in subdivision (e) of Section 13519.4, discrimination or unequal
12 treatment on the basis of race, color, ethnicity, national origin,
13 age, religion, gender identity or expression, sexual orientation, or
14 mental or physical disability, or any other violation of the legal
15 rights of a member of the public.

16 (C) A record related to any finding by a law enforcement agency
17 of job-related dishonesty by a peace officer or custodial officer,
18 including, but not limited to, perjury, false statements, filing false
19 reports, or destruction or concealment of evidence.

20 (2) Records that shall be released pursuant to this subdivision
21 include, but are not limited to, the framing allegation or complaint,
22 the agency's full investigation file, any evidence gathered, and
23 any findings or recommended findings, discipline, or corrective
24 action taken.

25 (3) A record disclosed pursuant to this section shall be redacted
26 only to remove personal data or information, such as a home
27 address, telephone number, or identities of family members, other
28 than the names and work-related information of peace and
29 custodial officers, to preserve the anonymity of complainants and
30 witnesses, or to protect confidential medical, financial, or other
31 information in which disclosure would cause an unwarranted
32 invasion of personal privacy that clearly outweighs the strong
33 public interest in records about misconduct by peace officers and
34 custodial officers, or where there is a specific, particularized
35 reason to believe that disclosure of the record would pose a
36 significant danger to the physical safety of the peace officer,
37 custodial officer, or others.

38 ~~(b)~~

1 ~~(d) Notwithstanding subdivision (a), subdivisions (a) and (c),~~
2 a department or agency shall release to the complaining party a
3 copy of his or her own statements at the time the complaint is filed.

4 ~~(e)~~

5 ~~(e) Notwithstanding subdivision (a), subdivisions (a) and (c),~~
6 a department or agency that employs peace *officers* or custodial
7 officers may disseminate data regarding the number, type, or
8 disposition of complaints (sustained, not sustained, exonerated, or
9 unfounded) made against its officers if that information is in a
10 form which does not identify the individuals involved.

11 ~~(d)~~

12 ~~(f) Notwithstanding subdivision (a), subdivisions (a) and (c), a~~
13 department or agency that employs peace *officers* or custodial
14 officers may release factual information concerning a disciplinary
15 investigation if the officer who is the subject of the disciplinary
16 investigation, or the officer's agent or representative, publicly
17 makes a statement he or she knows to be false concerning the
18 investigation or the imposition of disciplinary action. Information
19 may not be disclosed by the peace *officer's* or custodial officer's
20 employer unless the false statement was published by an
21 established medium of communication, such as television, radio,
22 or a newspaper. Disclosure of factual information by the employing
23 agency pursuant to this subdivision is limited to facts contained
24 in the officer's personnel file concerning the disciplinary
25 investigation or imposition of disciplinary action that specifically
26 refute the false statements made public by the peace *officer* or
27 custodial officer or his or her agent or representative.

28 ~~(e)~~

29 (g) (1) The department or agency shall provide written
30 notification to the complaining party of the disposition of the
31 complaint within 30 days of the disposition. *The notification shall*
32 *include, at a minimum, the charges framed in response to the*
33 *complaint, the agency's disposition with respect to each of those*
34 *charges, any factual findings on which the agency based its*
35 *dispositions, and any discipline imposed or corrective action taken.*

36 (2) The notification described in this subdivision shall not be
37 conclusive or binding or admissible as evidence in any separate
38 or subsequent action or proceeding brought before an arbitrator,
39 court, or judge of this state or the United States.

40 ~~(f) Nothing in this section shall~~

1 (h) *This section does not* affect the discovery or disclosure of
2 information contained in a peace *officer's* or custodial officer's
3 personnel file pursuant to Section 1043 of the Evidence Code.

4 SEC. 7. The Legislature finds and declares that Section 6 of
5 this act, which amends Section 832.7 of the Penal Code, furthers,
6 within the meaning of paragraph (7) of subdivision (b) of Section
7 3 of Article I of the California Constitution, the purposes of that
8 constitutional section as it relates to the right of public access to
9 the meetings of local public bodies or the writings of local public
10 officials and local agencies. Pursuant to paragraph (7) of
11 subdivision (b) of Section 3 of Article I of the California
12 Constitution, the Legislature makes the following findings:

13 The public has a strong, compelling interest in law enforcement
14 transparency because it is essential to having a just and democratic
15 society.

16 SEC. 8. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution for certain
18 costs that may be incurred by a local agency or school district
19 because, in that regard, this act creates a legislative mandate that
20 is within the scope of paragraph (7) of subdivision (b) of Section
21 3 of Article I of the California Constitution.

22 However, if the Commission on State Mandates determines that
23 this act contains other costs mandated by the state, reimbursement
24 to local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.